

E6OPKONP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA

4 v.

10 Cr. 228 (LTS)

5 PAUL KONIGSBERG,

6 Defendant.
7 -----x

8 New York, N.Y.
9 June 23, 2014
11:08 a.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 MATTHEW L. SCHWARTZ

18 JOHN T. ZACH

Assistant United States Attorneys

19 REED M. BRODSKY

20 CHRISTINE DEMANA

Attorneys for Defendant

21 ALSO PRESENT: FBI AGENT PAUL ROBERTS

22 FBI AGENT PATRICK DUFFY

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(In open court)

(Case called)

THE COURT: Good morning. Would everyone other than counsel please be seated. Thank you. May I now have appearances, starting with the government?

MR. SCHWARTZ: Good morning, your Honor. Matthew Schwartz and John Zach for the government, and we're joined this morning by Special Agents Paul Roberts and Patrick Duffy from the FBI.

THE COURT: Morning, Mr. Schwartz, Mr. Zach, Special Agents Roberts and Duffy.

MR. BRODSKY: Good morning, your Honor. Reed Brodsky on behalf of Paul Konigsberg, who's here with me, and with us, of course, also is Christine Demana from Gibson Dunn as well.

THE COURT: Morning, Mr. Brodsky, Mr. Konigsberg and Ms. Demana. Please be seated. Give me just a moment, please. I understand that Mr. Konigsberg has an application to withdraw his not guilty plea and enter a guilty plea to a three-count superseding information, which is labeled S12 10 CR 228; is that correct, Mr. Brodsky?

MR. BRODSKY: Yes, your Honor.

THE COURT: And the plea is pursuant to the agreement that has been executed and is marked as Government Exhibit 1; is that correct?

MR. BRODSKY: Yes, your Honor.

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1 THE COURT: And the advice of rights form has also
2 been executed and marked as Court Exhibit 1; is that correct?

3 MR. BRODSKY: That's correct, your Honor.

4 THE COURT: Thank you. Mr. Schwartz or Mr. Zach,
5 would you please make a statement regarding victim notification
6 in connection with this proceeding?

7 MR. SCHWARTZ: Yes, your Honor. The government filed
8 electronically on Sunday night a letter indicating that today's
9 proceeding would be happening. That was posted also on our
10 office's Madoff-related website. In addition, the government
11 made direct mailings to the thousands of people that have been
12 identified as victims to our victim witness unit about today's
13 proceedings.

14 THE COURT: Thank you. And good morning to the
15 victims, friends and other spectators.

16 Mr. Konigsberg, before I accept your waiver of
17 indictment and your guilty plea, there are a number of
18 questions that I must ask you while you are under oath to
19 assure that the waiver and plea are valid. At times, I may
20 cover a point more than once and I may cover matters that were
21 also addressed in the advice of rights form that you've seen,
22 but if I do, that is because it is very important that you
23 understand what is happening here today.

24 In that connection, if you don't understand something
25 that I ask you, please say so, and I will re-word the question

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1 or you may speak with your attorney. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Please stand now to take the oath.

4 (Defendant sworn)

5 THE DEPUTY CLERK: State your full name for the
6 record?

7 THE DEFENDANT: Paul J. Konigsberg.

8 THE DEPUTY CLERK: Thank you.

9 THE COURT: Mr. Konigsberg, do you understand that you
10 have solemnly promised to tell the truth and that if you answer
11 any of my questions falsely, your false or untrue answers may
12 later be used against you in another prosecution for perjury or
13 making a false statement?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Thank you. You may be seated for the next
16 part of the proceeding. What is your age, sir?

17 THE DEFENDANT: I'm sorry, my age?

18 THE COURT: Yes.

19 THE DEFENDANT: 78, your Honor.

20 THE COURT: Thank you. Do you need me to speak
21 louder?

22 THE DEFENDANT: No. My hearing is pretty good.

23 THE COURT: Okay. If you do have any trouble at any
24 time hearing me, just let me know, and I'll try to do better.

25 THE DEFENDANT: Thank you, your Honor.

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1 THE COURT: How far did you go in school?

2 THE DEFENDANT: I finished my Master of Law degree
3 from NYU.

4 THE COURT: And have you practiced as an accountant?

5 THE DEFENDANT: I practiced as an accountant for the
6 last 50 years, stopping somewhere around June 30th of this
7 year.

8 THE COURT: And did you also practice as a lawyer?

9 THE DEFENDANT: Only at the very beginning when I got
10 started. The answer is, for the last 50 years, no.

11 THE COURT: Mr. Brodsky, would you pull the microphone
12 just a bit closer to Mr. Konigsberg. Thank you.

13 MR. BRODSKY: Yes.

14 THE COURT: Mr. Konigsberg, are you able to read,
15 speak and understand the English language well?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Are you a citizen of the United States?

18 THE DEFENDANT: I am, your Honor.

19 THE COURT: Are you now or have you recently been
20 under the care of a physician or a psychiatrist?

21 THE DEFENDANT: I've had, at various times, seen a
22 psychiatrist, but not often, yes.

23 THE COURT: Are you suffering from any condition that
24 effects your ability to think clearly?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Are you suffering from any condition that
2 effects your ability to understand and process complex
3 information?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Are you taking any medications?

6 THE DEFENDANT: I take a sleeping pill called Solprin
7 once a night.

8 THE COURT: Have you ever been treated or hospitalized
9 for any mental illness or for any type of addiction, including
10 drug or alcohol addiction?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: In the past 24 hours, have you taken any
13 drugs, medicine or pills or had any alcohol?

14 THE DEFENDANT: No alcohol, and the only pill I took
15 was the Solprin last night about 12:00 -- 11:30.

16 THE COURT: Is your mind clear at this point?

17 THE DEFENDANT: Absolutely.

18 THE COURT: Are you feeling well physically today?

19 THE DEFENDANT: Yes, I am, your Honor.

20 THE COURT: Are you represented by counsel here today?

21 THE DEFENDANT: I am, your Honor.

22 THE COURT: What is your lawyer's name?

23 THE DEFENDANT: Mr. Reed Brodsky from Gibson, Dunn.

24 THE COURT: Mr. Brodsky, Messers Schwartz and Zach,
25 does any of you have any doubt as to Mr. Konigsberg's

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1 competence to enter a guilty plea at this point?

2 MR. BRODSKY: No, your Honor.

3 MR. SCHWARTZ: No, your Honor.

4 THE COURT: Mr. Konigsberg, your attorney has informed
5 me that you want to withdraw your not guilty plea and plead
6 guilty to a superseding information. Do you want to plead
7 guilty?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you fully discussed your case with
10 your attorney, including the charges to which you intend to
11 plead guilty and any defenses that you may have to those
12 charges?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you and your attorney discussed the
15 consequences of pleading guilty?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Are you satisfied with your attorney and
18 his representation of you?

19 THE DEFENDANT: Absolutely.

20 THE COURT: On the basis of Mr. Konigsberg's responses
21 to my questions and my observation of his demeanor, I find that
22 Mr. Konigsberg is fully competent to waive indictment and enter
23 an informed plea at this time.

24 Before I accept your plea, sir, I'm going to ask you
25 some more questions. These questions are intended to satisfy

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1 the Court that you want to plead guilty because you are, in
2 fact, guilty and that you equally understand your rights and
3 the consequences of your plea. I will now describe certain
4 rights that you have under the Constitution and laws of the
5 United States. You will be giving up these rights if you plead
6 guilty. Please listen carefully. If you do not understand
7 something that I'm saying or describing, stop me, and I or your
8 attorney will explain it more fully.

9 Under the Constitution and laws of the United States,
10 you have the right to a speedy and public trial by a jury on
11 the charges against you that are in the information; do you
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that you have the right
15 to plead not guilty and to continue to plead not guilty to each
16 of the charges?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If there were a trial, you would be
19 presumed innocent and the government would be required to prove
20 you guilty by competent evidence and beyond a reasonable doubt.
21 You would not have to prove that you were innocent at a trial.
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If there were a trial, a jury composed of
25 12 people selected from this district would have to agree

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1 unanimously in order to find you guilty. Do you understand
2 that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: If there were a trial, you would have the
5 right to be represented by an attorney at the trial and at all
6 other stages of the proceedings, and if you could not afford
7 one, an attorney would be provided to you free of cost. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If there were a trial, you would have the
11 right to see and hear all of the witnesses against you and your
12 attorney could cross-examine them. Also, you would have the
13 right to have your attorney object to the government's evidence
14 and offer evidence on your behalf, if you so desired.

15 In addition, you would have the right to have
16 witnesses required to come to court to testify in your defense,
17 and you would have the right to testify yourself, but you would
18 not be required to testify. Do you understand all that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Would you like some water?

21 THE DEFENDANT: No. I thank you.

22 THE COURT: All right. If you need it, just let me
23 know. I'll give you some.

24 THE DEFENDANT: Thank you. I appreciate that.

25 THE COURT: All right. Do you understand that if

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1 there were a trial and you decided not to testify, no adverse
2 inference could be drawn against you based on your decision not
3 to testify?

4 THE DEFENDANT: Yes, your Honor. I understand.

5 THE COURT: Do you understand that if you were
6 convicted at a trial, you would have the right to appeal that
7 verdict?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand each and every one of
10 the rights that I've asked you about?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you have any questions about any of
13 these rights?

14 THE DEFENDANT: I do not.

15 THE COURT: Do you understand that by pleading guilty
16 today, you will be giving up each and every one of these
17 rights?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you also understand that you will be
20 waiving any possible claim that your constitutional rights may
21 have been violated and that you will have no trial?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that by pleading guilty,
24 you will also have to give up your right not to incriminate
25 yourself because I will ask you questions about what you did in

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1 order to satisfy myself that you are guilty as charged, and you
2 will have to admit and acknowledge your guilt?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that you can change your
5 mind right now and refuse to plead guilty? You do not have to
6 enter this plea if you don't want to, for any reason. Do you
7 understand this fully?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: And do you still want to plead guilty?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: The document that contains the charges to
12 which you've indicated you wish to plead guilty is called an
13 information. It has been issued by the United States Attorney.
14 You have a constitutional right to be charged by an indictment
15 rather than an information. An indictment would be a charge
16 issued from the grand jury. Do you understand that?

17 THE DEFENDANT: Yes. I do, your Honor.

18 THE COURT: Mr. Brodsky, would you please show
19 Mr. Konigsberg the waiver of indictment form.

20 MR. BRODSKY: Yes, your Honor. I don't believe I have
21 a copy. I believe the copies are with your deputy.

22 THE COURT: You should have there the waiver of
23 indictment form, the plea agreement and the advice of rights
24 form signed.

25 MR. BRODSKY: I do have the plea agreement and the

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1 advice of rights form.

2 THE COURT: A copy of the waiver of indictment is on
3 its way.

4 MR. BRODSKY: Thank you, your Honor.

5 THE COURT: Okay. Mr. Konigsberg, have you signed
6 this waiver of indictment form?

7 THE DEFENDANT: Yes. I did, your Honor.

8 THE COURT: Did you read it before you signed it?

9 THE DEFENDANT: I did.

10 THE COURT: Did you understand it before you signed
11 it?

12 THE DEFENDANT: It was explained to me, yes, your
13 Honor.

14 THE COURT: And do you understand that if you do not
15 waive indictment, if the government wants to prosecute you on
16 the particular charges that are in this information, it would
17 have to present those charges to a grand jury, which might or
18 might not indict you on them?

19 THE DEFENDANT: Yes, your Honor. I understand.

20 THE COURT: Do you understand that you're under no
21 obligation to waive indictment?

22 THE DEFENDANT: I am, your Honor.

23 THE COURT: Do you realize that by waiving indictment,
24 you are giving up your right to have these charges presented to
25 a grand jury?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand what a grand jury is?

3 THE DEFENDANT: I do.

4 THE COURT: Has anyone threatened you or promised you
5 anything to get you to waive indictment?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Have you seen a copy of the superseding
8 information that is captioned S12 10 CR 228?

9 THE DEFENDANT: Yes, I have, your Honor.

10 THE COURT: Have you read it?

11 THE DEFENDANT: Thoroughly.

12 THE COURT: Have you discussed it with your attorney?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Do you understand the charges against you
15 that are detailed in that information?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: If you want me to, I will read the
18 information out loud to you now here in court. Do you want me
19 to read it out loud to you?

20 THE DEFENDANT: It's not necessary. Thank you, your
21 Honor.

22 THE COURT: Very well. I find that Mr. Konigsberg's
23 waiver of indictment is knowing and voluntary. I accept it and
24 so order it.

25 Mr. Konigsberg, do you understand that Count One of

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1 this S12 superseding information charges you with participating
2 in a conspiracy to falsify books and records of a
3 broker-dealer, falsify books and records of an investment
4 advisor, and obstruct or impede the lawful governmental
5 functions of the Internal Revenue Service in the ascertainment,
6 assessment, computation, and selection of income taxes in
7 violation of Title 18 of the United States Code Section 371?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that Count Two of this
10 information charges you with falsifying books and records of a
11 broker-dealer in violation of Title 15 of the United States
12 Code Sections 78q(a) and 78ff, Title 17 of Code of Federal
13 Regulations Section 240.17a-3 and Title 18 of the United States
14 Code Section 2?

15 THE DEFENDANT: Yes, your Honor. I do.

16 THE COURT: Do you understand that Count Three of this
17 information charges you with falsifying the books and records
18 of an investment advisor in violation of Title 15 of the United
19 States Code Sections 80b-4 and 80b-17, Title 17, Code of
20 Federal Regulations section 275.204-2 and Title 18 of the
21 United States Code Section 2?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Do you understand that the government
24 would have to prove each and every part or element of each of
25 these charges beyond a reasonable doubt at a trial if you did

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1 not plead guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Schwartz or Mr. Zach, would you please
4 explain the elements that the government would have to prove if
5 we were to go to trial on this S12 information?

6 MR. SCHWARTZ: Yes, your Honor. Count One charges a
7 conspiracy. To prove the crime of conspiracy, the government
8 must establish each of the following elements beyond a
9 reasonable doubt:

10 First, that the charged conspiracy existed.

11 Second, that the defendant knowingly and willingly
12 became a member of the conspiracy. That is, that the defendant
13 had the necessary intent. As your Honor noted, the objects of
14 the conspiracy charged in Count One are to falsify the books
15 and records of the broker-dealer, to falsify the books and
16 records of an investment advisor and to obstruct and impede the
17 due administration of the Internal Revenue office.

18 And, third, the government would have to prove that
19 any one of the co-conspirators, not necessarily the defendant,
20 knowingly committed at least one overt act in the Southern
21 District of New York in furtherance of the conspiracy during
22 the lifetime of the conspiracy.

23 Count Two charges the defendant with falsifying the
24 books and records of a broker-dealer. To prove that crime, the
25 government would have to prove beyond a reasonable doubt,

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1 first, that Madoff Securities was a registered broker-dealer
2 that was required, under the Securities Exchange Act of 1934,
3 to make and keep the records charged in Count Two, which
4 include client account statements, trade confirmations and as
5 well as certain employment records.

6 And, second, that the defendant knowingly and
7 willfully made or caused to be made a materially false or
8 misleading statement in those records.

9 And Count Three charges the defendant with falsifying
10 the books and records of an investment advisor. To prove that
11 crime, the government would have to prove beyond a reasonable
12 doubt, first, that Madoff Securities was a registered or
13 unregistered investment advisor; second, that Madoff Securities
14 made use of the mails or any instrumentalities of interstate
15 commerce in connection with its investment advisory business;
16 third, that Madoff Securities was required by law to make and
17 keep the records charged in Count Three, which include again
18 client account statements, trade confirmations as well as
19 certain employment records; and, fourth, that the defendant
20 knowingly and willfully caused Madoff Securities to fail to
21 make and keep those records required by law.

22 THE COURT: Thank you. Mr. Konigsberg, do you
23 understand what the government would have to prove if you did
24 not plead guilty?

25 THE DEFENDANT: Yes. I do, your Honor.

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1 THE COURT: Do you understand that the maximum
2 possible penalty for the crime charged in Count One is five
3 years of imprisonment, plus a fine of the greatest of \$250,000,
4 twice the gain resulting from the offense or twice the loss to
5 other people resulting from the offense, plus a \$100 special
6 assessment, plus three years of supervised release after your
7 term of imprisonment, plus full restitution to all persons
8 injured by your criminal conduct?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that the maximum
11 possible penalty for the crime charged in Count Two is 20 years
12 of imprisonment, plus a fine of the greatest of \$5 million,
13 twice the gain resulting from the offense or twice the loss to
14 other people resulting from the offense, plus a \$100 special
15 assessment, plus three years of supervised release after your
16 term of imprisonment, plus full restitution to all persons
17 injured by your criminal conduct?

18 THE DEFENDANT: Yes. I do, your Honor.

19 THE COURT: And do you understand that the maximum
20 possible penalty for the crime charged in Count Three is five
21 years of imprisonment, plus a fine of the greatest of \$250,000,
22 twice the gain resulting from the offense or twice the loss to
23 other people resulting from the offense, plus a \$100 special
24 assessment, plus three years of supervised release after your
25 term of imprisonment, plus full restitution to all persons

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1 injured by your criminal conduct?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Do you understand that the maximum
4 possible combined penalty for the three crimes to which you
5 propose to plead guilty is 30 years of imprisonment, plus a
6 fine of \$5,500,000 or the greater of the sums of the relevant
7 gains, losses and statutory amounts relating to your offenses,
8 plus full restitution to all persons injured by your criminal
9 conduct, plus a \$300 total mandatory special assessment, plus
10 supervised release for three years after your term of
11 imprisonment?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: I will now give you some information and
14 verify your understanding of the supervised release aspect of
15 the potential penalty. Supervised release means that you will
16 be subject to monitoring when you are released from prison,
17 terms and conditions will be imposed. If you violate any of
18 the set terms and conditions, you can be sent back to prison
19 without a jury trial. If you are on supervised release and you
20 do not comply with any of the set terms or conditions, you can
21 be sent to prison for the remainder of the term of supervised
22 release. You'll be given no credit for the time that you
23 served in prison as a result of your sentence and no credit for
24 any time spent on post-release supervision.

25 So, for example, if you received a prison term and

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1 then a two-year term of supervised release, and after you left
2 prison you lived up to the terms of supervised release for
3 almost two years, but then you violated some term of the
4 supervised release, you could be sent back to prison for two
5 whole years. Do you understand that?

6 THE DEFENDANT: Yes. I do, your Honor.

7 THE COURT: Do you also understand that if I accept
8 your guilty plea and adjudge you guilty, that adjudication may
9 deprive you of valuable civil rights such as the right to vote,
10 the right to hold public office, the right to serve on a jury,
11 and the right to possess any kind of firearm?

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: Under current law, there are sentencing
14 guidelines that judges must consider in determining your
15 sentence. Have you spoken to your attorney about the
16 sentencing guidelines?

17 THE DEFENDANT: Yes. I have, your Honor.

18 THE COURT: Do you understand that in determining your
19 sentence, the Court must calculate the applicable sentencing
20 guidelines range and consider that range, possible departures
21 under the sentencing guidelines and other sentencing factors
22 under Title 18 of the United States Code Section 3553(a)?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Do you understand that if your attorney or
25 anyone else has attempted to estimate or predict what your

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1 sentence will be, their estimate or prediction could be wrong?

2 THE DEFENDANT: I understand.

3 THE COURT: Do you also fully understand that even if
4 your sentence is different from what your attorney or anyone
5 else told you it might be, or if it is different from what you
6 expect, you will still be bound to your guilty plea and you
7 will not be allowed to withdraw your guilty plea?

8 THE DEFENDANT: I understand.

9 THE COURT: Do you understand that the sentence to be
10 imposed will be determined solely by the Court, and that I can
11 only determine the sentence after the probation department
12 prepares a presentence report?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: Do you understand that the Court has
15 discretion, while taking into account the specific provisions
16 and policy statements of the guidelines, to sentence you to any
17 period of imprisonment between time served and the 30-year
18 combined statutory maximum?

19 THE DEFENDANT: I do, your Honor.

20 THE COURT: Are you currently serving any state or
21 federal sentence, or are you being prosecuted for any other
22 crime?

23 THE DEFENDANT: Absolutely not.

24 THE COURT: Do you understand that the superseding
25 information also includes a forfeiture allegation in which the

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1 government asserts that you are required to forfeit to the
2 United States all property, real and personal, involved in the
3 offense as charged in Counts One and Two of the superseding
4 information, to wit, a sum of money equal to \$4,400,000 and all
5 property traceable to such property?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: Mr. Brodsky, would you please show
8 Mr. Konigsberg the agreement, which is marked as Government
9 Exhibit 1.

10 MR. BRODSKY: Yes, your Honor. We have it before us.

11 THE COURT: Thank you. Mr. Konigsberg, have you
12 signed this agreement?

13 THE DEFENDANT: Yes. I have, your Honor.

14 THE COURT: Did you read it before you signed it?

15 THE DEFENDANT: I read every page.

16 THE COURT: Did you discuss it with your attorney
17 before you signed it?

18 THE DEFENDANT: Yes. I did, your Honor.

19 THE COURT: Did you fully understand it before you
20 signed it?

21 THE DEFENDANT: I did.

22 THE COURT: Does the agreement reflect accurately your
23 complete and total understanding of the entire agreement
24 between the government, your attorney and you?

25 THE DEFENDANT: Yes. It does, your Honor.

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1 THE COURT: Is everything that you understand about
2 your plea cooperation and sentence covered in this agreement?

3 THE DEFENDANT: I believe it is one hundred percent.

4 THE COURT: Has anything been left out?

5 THE DEFENDANT: Not that I'm aware of, no.

6 THE COURT: Has anyone made any promises to you, other
7 than what is set forth in that agreement, or threatened you or
8 forced you or given you anything to get you to plead guilty or
9 enter into the cooperation agreement?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Do you understand that even if the
12 government does not oppose or take a position on what your
13 attorney will ask as a sentence, I am free to impose whatever
14 sentence I believe is appropriate under the circumstances and
15 the applicable law, and you will have no right to withdraw your
16 plea?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that a motion by the
19 government would be required to enable me to depart downward
20 from the advisory sentencing guidelines range on the basis of
21 your assistance and that it is up to the government, not up to
22 me, to decide whether your cooperation has been substantial
23 enough for the government to move for such a sentence and that
24 it is up to me to determine the appropriate sentence?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you also understand that I have the
2 power to impose a non-guideline sentence upon consideration of
3 the factors enumerated in Title 18 of the United States Code
4 Section 3553(a)?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: Do you understand that the agreement
7 provides that you must cooperate fully with the office of the
8 United States Attorney, the Federal Bureau of Investigation,
9 the Internal Revenue Service, and any other law enforcement
10 agency designated by the United States Attorney?

11 THE DEFENDANT: I do, your Honor.

12 THE COURT: Do you understand that the agreement does
13 not bind any federal, state or local prosecuting authority
14 other than the United States Attorney?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Do you understand that the agreement
17 provides that if the United States Attorney determines that you
18 have provided substantial assistance in an investigation or
19 prosecution, and if you have fully complied with the
20 understanding specified in the agreement, the United States
21 Attorney will file a motion pursuant to Section 5K1.1 of the
22 sentencing guidelines requesting that the Court sentence you in
23 light of the factors set forth in Section 5K1.1(a)(1) through
24 (5)?

25 THE DEFENDANT: Yes. I do, your Honor.

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1 THE COURT: Do you understand that the factors that
2 the Court may consider under this section include the
3 significance and usefulness of your assistance, taking into
4 consideration the government's evaluation of the assistance you
5 rendered, the truthfulness, completeness and reliability of any
6 information or testimony provided, the nature and extent of
7 your assistance, any injury suffered or any danger or risk of
8 injury to you or your family as a result of your assistance,
9 and the timeliness of your assistance?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: Do you understand that even if the United
12 States Attorney files such a motion, the sentence to be imposed
13 on you remains within the sole discretion of the Court?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Do you understand that you will not be
16 entitled to withdraw your guilty plea, even if the Court denies
17 the motion?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do you understand that if the United
20 States Attorney determines that you have not provided
21 substantial assistance in an investigation or prosecution, or
22 that you have violated any provision of the agreement, the
23 United States Attorney is not obligated to file a motion under
24 Section 5K1.1?

25 THE DEFENDANT: I do, your Honor.

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1 THE COURT: And do you understand that you will not be
2 entitled to withdraw your guilty plea even if the United States
3 Attorney does not file the motion?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that your agreement
6 provides that if you commit any further crimes or if it is
7 determined that you gave false, incomplete or misleading
8 testimony or information, or otherwise violated any provision
9 of the agreement, you shall be subject to prosecution for any
10 federal violations of which the United States Attorney has
11 knowledge, including perjury and obstruction of justice?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that your agreement
14 provides that if you commit any further crimes, or if it is
15 determined that you gave false, incomplete or misleading
16 testimony or information or otherwise violated any provision of
17 the cooperation agreement, all statements that you have made to
18 the United States Attorney or other designated law enforcement
19 agents and any testimony you have given before a grand jury or
20 other tribunal may be admissible in evidence in any criminal
21 proceedings against you?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that your agreement also
24 provides that you may not assert a claim that such statements
25 should be suppressed from evidence, and that you have waived

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1 your right to claim that such statements should be suppressed
2 from evidence?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Counsel, in light of Mr. Konigsberg's
5 affirmation that he is an American citizen, is there any need
6 to allocute him on the immigration waiver provisions of the
7 agreement?

8 MR. BRODSKY: No, your Honor.

9 MR. SCHWARTZ: My appeals unit probably won't be
10 happy, but no, your Honor.

11 THE COURT: Thank you. Mr. Konigsberg, do you
12 understand that on Page 2, this agreement also includes your
13 agreement to forfeit to the United States a sum of money equal
14 to \$4,400,000 in United States currency, representing the
15 aggregate value of all property, real and personal, that
16 constitutes or is derived from proceeds traceable to the
17 commission of the offenses constituting specified unlawful
18 activity as defined in Title 18, Section 1956(c)(7), as alleged
19 in Counts One and Two of the information?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that any amount that you
22 do forfeit will not be credited towards any fines, restitution,
23 cost of imprisonment or other additional penalty that the Court
24 may impose on you?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you still want to plead guilty pursuant
2 to this agreement?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: Mr. Brodsky, do you know of any valid
5 reason why Mr. Konigsberg would prevail at trial?

6 MR. BRODSKY: No, your Honor.

7 THE COURT: Do you know of any reason why he should
8 not be permitted to plead guilty?

9 MR. BRODSKY: No, your Honor.

10 THE COURT: Mr. Konigsberg, would you and your
11 attorney please stand now and would you please tell me what you
12 did that makes you guilty of the crimes charged in the S12
13 superseding information?

14 MR. BRODSKY: Your Honor, Mr. Konigsberg has a written
15 statement, which he's reviewed and drafted, and I would ask
16 your Honor's permission to allow him to read the statement.

17 THE COURT: Yes, you may.

18 THE DEFENDANT: Thank you, your Honor. I'm here today
19 to take responsibility for what I did that was wrong. At
20 certain times I agreed with people at Madoff's firm, which was
21 a broker-dealer and an investment advisor, and certain of his
22 clients to return trading statements to them and then accept
23 amended ones from them, which included new and changed
24 securities transactions and that I used these amended
25 statements to file tax returns.

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1 Even though I didn't know these new securities
2 transactions never actually took place in the market, returning
3 the original statements and using amended ones with new trades
4 to file tax returns was wrong, and I knew it at the time.

5 In 2003, client 2 and I were present in Manhattan at
6 Madoff's firm when, in my presence, Annette Bongiorno changed
7 client 2's trading statements for the tax year 2002 so that
8 they showed a gain instead of a loss. I later agreed to use
9 those changed statements to file tax returns for client 2,
10 which I signed in Manhattan before submission to the IRS in
11 2003.

12 I knew Bongiorno's change of client 2's trading
13 statements were wrong and my filing of the tax return based on
14 them was wrong.

15 In 2008, Madoff's firm asked me to return the trading
16 statements of client 3 so that they could change them, and I
17 agreed and did return them. Tax returns based on client 3's
18 changed statements, however, were never filed following
19 Madoff's arrest in December of 2008. I knew that returning
20 clients 3's trading statements to be changed by Madoff's firm
21 was wrong.

22 Your Honor, I would like to just note two other
23 things. First, in or about 1995, I provided accurate and
24 proper tax advice to Madoff, advising him that transfers of
25 money through CC1 and CC2 could be done as a gift, which would

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1 be taxable to Madoff, or as a loan that would not be taxable so
2 long as CC1 and CC2 paid the required interest on those loans
3 and paid back the principal on those loans. I then referred
4 Madoff to a lawyer to prepare the loans.

5 On December 10th, 2008, the day before Madoff was
6 arrested, Madoff called me out of the blue and asked whether
7 these loans had been converted into gifts.

8 I responded that he never discussed the possibility of
9 reclassifying the loans into gifts with me and that he should
10 speak with his accountant, as I was not his accountant and,
11 therefore, did not make those kind of decisions.

12 Finally, it is important for me to let you know, your
13 Honor, that I was not aware of Madoff's horrific and evil Ponzi
14 schemes, which has brought great suffering to so many, and many
15 of my family members and close friends have suffered from what
16 he did and he did to others. Thank you.

17 THE COURT: Thank you. Mr. Konigsberg, did you, in
18 fact, participate in the preparation of that statement?

19 THE DEFENDANT: I did, your Honor.

20 THE COURT: Is everything that you have read from that
21 statement true?

22 THE DEFENDANT: Yes. It is, your Honor.

23 THE COURT: Mr. Schwartz, is there anything further
24 that the government would request be addressed in the actual
25 allocution?

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1 MR. SCHWARTZ: No, your Honor. I believe that
2 suffices.

3 THE COURT: Mr. Konigsberg, you may be seated.

4 Mr. Schwartz, would you please summarize the
5 government's evidence against Mr. Konigsberg?

6 MR. SCHWARTZ: Of course, your Honor. Your Honor, had
7 this case proceeded to trial, the government would have proven
8 through testimony and documentary evidence and other evidence,
9 beyond a reasonable doubt, the facts set forth in the
10 superseding information captioned S12 10 CR 228.

11 Specifically, the government would have proven that
12 Paul Konigsberg, the defendant, is a lawyer and a certified
13 public accountant, who was the senior tax partner of
14 Konigsberg, Wolf and Company PC, and a minority shareholder of
15 Madoff Securities International Limited, making him the only
16 person outside of the Madoff family to hold an ownership
17 interest in any of the Madoff entities.

18 Beginning in at least the early 1990s, Madoff began to
19 steer several of his investors towards Konigsberg's accounting
20 practice, particularly certain long-time investors in whose
21 accounts Madoff executed the most glaringly fraudulent
22 transactions. By December 2008, when the fraud collapsed,
23 Konigsberg, Wolf was providing accounting services for Madoff
24 Securities' clients who aggregately held over 300 investment
25 advisory accounts.

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1 After the death of one long-time Madoff client, who
2 had recruited investors and so had been promised by Madoff
3 corresponding annual commission payments in the form of
4 guaranteed returns and fictitious backdated trades, Madoff
5 encouraged the client's widow to use Konigsberg as his
6 accountant. Konigsberg received statements for the widow's
7 account, and each December, over the course of several years,
8 Konigsberg called Frank DiPascali to ensure that the widow's
9 accounts reflected the promised returns.

10 Madoff and Frank DiPascali then devised an investment
11 strategy for the widow's account in which her money would be
12 invested in treasury bonds and cash equivalents for the first
13 eleven months of each year and in January, DiPascali would
14 fabricate backdated options trades in order to generate the
15 promised returns in December of the prior month.

16 In addition, from time to time, Madoff and certain of
17 his employees amended the holdings of some of his oldest
18 clients, replacing statements reflecting one set of securities
19 with revised statements for the exact same time period,
20 reflecting entirely different holdings and values.

21 Because of the existence of multiple vastly different
22 account statements for the same time, because that risked
23 exposing the fraud, Madoff could only ask certain trusted
24 clients and Paul Konigsberg to return their statements in favor
25 of the amended ones. Although he did not intend to assist

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1 Madoff in defrauding his customers through the Ponzi scheme,
2 because Konigsberg serviced certain of Madoff's most important
3 accounts, he did frequently return client account statements in
4 favor of the false amended ones.

5 For example, Konigsberg was physically present when
6 Annette Bongiorno and a client revised an entire year's worth
7 of transaction activity. When the backdating was complete,
8 Konigsberg returned the original account statements to
9 Bongiorno and then used the new extra-false books and records
10 to file the client's tax returns.

11 Konigsberg similarly returned statements for another
12 client in 2008, after Madoff and his co-conspirators had redone
13 a year's worth of statements.

14 In addition to being paid for his accounting services
15 directly by his clients, Konigsberg also received payments from
16 Madoff Securities of approximately 15,000 to \$25,000 per month
17 for over a decade.

18 In addition, beginning in approximately 1992,
19 Konigsberg arranged for a relative to be put on Madoff
20 Securities' payroll, receiving salary and employee benefits
21 despite not working at the firm. Konigsberg arranged for the
22 relative to be paid by Madoff in lieu of accepting payments
23 himself, despite the fact that the payments were on account of
24 customers that Konigsberg recruited to invest with Madoff.

25 Finally, Konigsberg also provided tax and business

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1 advice to Madoff personally, although he was not Madoff's
2 accountant. For example, in approximately 2002, Konigsberg,
3 Madoff, Peter Madoff and two Madoff Securities' employees
4 identified in the information as CC1 and CC2 partnered in a
5 real estate venture. Konigsberg participated in a
6 tax-reduction strategy in which the real estate was donated to
7 charity in order to generate a large charitable deduction. CC1
8 and CC2 then took advantage of millions of dollars in
9 back-dated securities trading at Madoff Securities in order to
10 be able to benefit from the entire deduction.

11 Konigsberg also advised Madoff about the tax
12 implications of transferring large sums of money directly to
13 CC1 and CC2. Although Konigsberg provided accurate tax advice
14 to Madoff, Madoff, CC1 and CC2 used that advice to structure
15 what appeared to be tax-free loans, but which loans in fact
16 were never intended to be repaid.

17 On December 10th, 2008, the day before Madoff was
18 arrested, Madoff called Konigsberg to ask whether the loans had
19 been converted into gifts, which would have created a
20 substantial tax liability for Madoff. In fact, Madoff and
21 Konigsberg had never discussed the possibility of reclassifying
22 the loans into gifts and Konigsberg told Madoff so.

23 THE COURT: Is it the government's representation that
24 the government can prove those factual representations through
25 competent witnesses and admissible evidence?

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1 MR. SCHWARTZ: It is, your Honor.

2 THE COURT: Thank you. Mr. Konigsberg, would you
3 please stand again. How do you now plead to the charge in
4 Count One of the information, not guilty or guilty?

5 THE DEFENDANT: Guilty, your Honor.

6 THE COURT: How do you now plead to the charge in
7 Count Two of the information, not guilty or guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: How do you now plead to the charge in
10 Count Three of the information, not guilty or guilty?

11 THE DEFENDANT: Guilty, your Honor.

12 THE COURT: Are you pleading guilty to each of these
13 charges because you are, in fact, guilty of the crimes charged?

14 THE DEFENDANT: Yes, I am, your Honor.

15 THE COURT: Are you pleading guilty voluntarily and of
16 your own freewill?

17 THE DEFENDANT: I am, your Honor.

18 THE COURT: Mr. Brodsky, would you please show
19 Mr. Konigsberg Court Exhibit 1, the advice of rights form.

20 Mr. Konigsberg, have you signed this form?

21 THE DEFENDANT: Yes, I have, your Honor.

22 THE COURT: Did you read it before you signed it?

23 THE DEFENDANT: Yes. It was read to me, and I looked
24 it over.

25 THE COURT: Did you discuss it with your attorney

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1 before you signed it?

2 THE DEFENDANT: Yes. I did, your Honor.

3 THE COURT: And did you understand it before you
4 signed it?

5 THE DEFENDANT: I did.

6 THE COURT: Mr. Brodsky, did you also review and sign
7 Court Exhibit 1?

8 MR. BRODSKY: I did, your Honor.

9 THE COURT: Mr. Brodsky, are there any other questions
10 that you believe I should ask Mr. Konigsberg in connection with
11 this plea?

12 MR. BRODSKY: No, your Honor.

13 THE COURT: Mr. Schwartz, are there any other
14 questions that you believe I should ask in connection with the
15 plea?

16 MR. SCHWARTZ: No, your Honor. Thank you.

17 THE COURT: Thank you. Mr. Konigsberg, you have
18 acknowledged that you are guilty as charged in the S12
19 information. I find that you know your rights and that you are
20 waiving them voluntarily. Because your plea is entered
21 knowingly and voluntarily and is supported by independent basis
22 in fact, containing each of the essential elements of each
23 offense, I accept your guilty plea and I adjudge you guilty of
24 the offenses charged in Counts One, Two and Three of
25 superseding information S12 10 CR 228. Thank you. You may be

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1 seated.

2 THE DEFENDANT: Thank you, your Honor.

3 THE COURT: Mr. Brodsky, do you wish to be present for
4 any interview of Mr. Konigsberg in connection with the
5 preparation of the presentence report?

6 MR. BRODSKY: Yes, your Honor.

7 THE COURT: I will make that direction.

8 Counsel, what is your desire with respect to setting a
9 sentencing or control date?

10 MR. SCHWARTZ: Your Honor, I'd suggest we set a
11 control date six months out.

12 THE COURT: Give me just one moment, please.

13 MR. SCHWARTZ: Or if it is administratively easier, I
14 think now all of the other cooperators in this case are on the
15 same day. You may just want to put this one on the same day.

16 THE COURT: All right. I'd have to find that day.
17 Let me see if I can do that.

18 MR. SCHWARTZ: It's in September.

19 THE COURT: Yes, it is September 19th. So we will set
20 a control date of September 19th at 2:00 in the afternoon.

21 Counsel, when it ultimately comes time for the
22 preparation of the presentence report in advance of an actual
23 sentencing date, make your submissions in accordance with my
24 sentencing submission procedures, which are posted on the
25 court's website.

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1 And, Mr. Konigsberg, at some point, the probation
2 office will be preparing a presentence report to assist me in
3 sentencing you. You will be interviewed by the probation
4 office. It is important that the information that you give to
5 the probation officer be truthful and accurate. The report is
6 important in my decision as to what your sentence will be.

7 You and your attorney have a right and will have an
8 opportunity to examine the report, to challenge or comment on
9 it and to speak on your behalf before sentencing. Failing to
10 be truthful with the probation office and the Court may have an
11 adverse effect on your sentence and may subject you to
12 prosecution. Do you understand that?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: Are there any applications with respect to
15 alteration of release conditions pending sentence?

16 MR. SCHWARTZ: No, your Honor.

17 MR. BRODSKY: No, your Honor.

18 THE COURT: The current release conditions are
19 continued pending sentencing.

20 Mr. Konigsberg, do you understand that if you fail to
21 return to my courtroom for sentencing on the day and time
22 ultimately set for your actual sentencing, you will be guilty
23 of a criminal act for which you could be sentenced to
24 imprisonment separate or apart from and in addition to any
25 other sentence that you might receive for the crimes to which

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1 you have just pled guilty?

2 THE DEFENDANT: I will be here, your Honor.

3 THE COURT: Do you also understand that all of the
4 conditions on which you have been released up until now
5 continue to apply and that the consequences of violating any of
6 those conditions can be severe?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Thank you. Counsel, is there anything
9 else that we need to address together this morning?

10 MR. BRODSKY: Your Honor, if I may, I'd like to draw
11 your attention to the many family members, colleagues, and
12 friends of Mr. Konigsberg, who are here to support him in his
13 time of need. He's been there in the past to support them in
14 their time of need and they love him very much, and I wanted to
15 draw that to your attention.

16 THE COURT: Thank you. Good morning to all of you,
17 and thank you for coming to court today. And with that, we are
18 adjourned. Keep well, everyone.

19 MR. SCHWARTZ: Thank you.

20 MR. BRODSKY: Thank you, your Honor.

21 (Adjourned)
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23
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25